



*United States Attorney  
Southern District of New York*

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CONTACT: U.S. ATTORNEY'S OFFICE  
HERBERT HADAD, MEGAN GAFFNEY  
PUBLIC INFORMATION OFFICE  
(212) 637-2600

**U.S. CHARGES TOP EXECUTIVES AT BROKER-DEALER WITH  
SECURITIES FRAUD AND WIRE FRAUD IN CONNECTION WITH  
ALLEGED ABUSIVE 'MARKET-TIMING' MUTUAL FUND TRADING**

DAVID N. KELLEY, the United States Attorney for the Southern District of New York, announced the filing of securities fraud and wire fraud charges against three top executives at MUTUALS.com, a Dallas-based broker dealer. The Indictment unsealed today charges RICHARD A. SAPIO, the Chief Executive Officer, ERIC MCDONALD, the President, and MICHELE LEFTWICH, the Compliance Officer, for their alleged participation in a scheme to defraud mutual fund shareholders on behalf of their clients in connection with "market timing," a practice involving the short-term trading of mutual funds.

According to the Indictment, a significant portion of MUTUALS.com's business was devoted to facilitating market-timing transactions in mutual funds on behalf of hedge funds and other sophisticated investors. The charges in the Indictment allege that MUTUALS.com received numerous warnings from mutual fund

companies that its trading practices were unwanted and harmful to shareholders, and that the funds would not permit such trades. Nevertheless, according to the Indictment, the defendants devised and executed a number of deceptive practices to circumvent restrictions placed on MUTUALS.com's trading by mutual funds. According to the Indictment, these deceptive practices included (1) creating and using multiple account numbers for the same client; (2) creating and using affiliated broker dealers to execute trades, and concealing and misrepresenting the relationship between MUTUALS.com and these affiliated broker dealers; and (3) executing trades through multiple clearing firms. By using these deceptive techniques, in 2003 alone, MUTUALS.com and its affiliated entities were able to execute, on behalf of their clients, thousands of trades in mutual funds that had specifically complained about the firms' short-term trading practices.

For example, according to the Indictment, after receiving numerous complaints from mutual fund companies about MUTUALS.com's trading practices, the defendants established two affiliated broker dealers to continue to place market timing trades for their clients in a manner designed to conceal MUTUALS.com's involvement. As alleged in the Indictment, although these affiliated broker dealers were controlled by the defendants, they did not use MUTUALS.com's address, but instead

used mailboxes maintained at mail service facilities. In addition, as alleged in the Indictment, when confronted by a mutual fund company about the relationship between MUTUALS.com and one of the affiliated broker dealers the defendants created, and for which MCDONALD, the defendant, served as President, MCDONALD denied that there was any relationship, and claimed never to have heard of the affiliated broker dealer.

The Indictment charges SAPIO, MCDONALD and LEFTWICH with conspiracy to commit securities fraud, mail fraud and wire fraud, and substantive counts of securities fraud and wire fraud. If convicted of the conspiracy charge, each defendant faces a maximum penalty of 5 years in prison, and a fine of \$250,000 or twice the gross gain or gross loss from the offense. If convicted of the securities fraud charge, each defendant faces a maximum penalty of 20 years in prison and a \$5 million fine or twice the gross gain or gross loss from the offense. If convicted of the wire fraud charge, each defendant faces a maximum penalty of 30 years in prison and a \$1 million fine or twice the gross gain or gross loss from the offense.

The defendants are also facing civil securities fraud charges filed against them by the Securities and Exchange Commission ("SEC") in Dallas federal court.

SAPIO, 40, lives in Dallas, Texas.

MCDONALD, 31, lives in DeSoto, Texas.

LEFTWICH, 35, lives in Dallas, Texas.

The defendants are expected to be arraigned on the Indictment in Manhattan federal court next week.

Mr. KELLEY, a member of the President's Corporate Fraud Task Force, praised the efforts of the United States Postal Inspection Service in the investigation of this case. Mr. KELLEY also expressed gratitude to the SEC for its assistance in this matter.

Assistant United States Attorneys STEVEN R. GLASER and JOSHUA A. LEVINE are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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